

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NORMAN SCOTT, SR., et al.
Plaintiffs,

v.

ROBERT J. MATTHEWS, et al.
Defendants.

Civil Action No. 06-98

MEMORANDUM / ORDER

November 8, 2006

By Memorandum/Order dated September 8, 2006 (Docket # 15), I ordered that the plaintiffs' complaint be stricken for their failure to file an amended complaint within the period prescribed by my previous order of July 26, 2006. Defendants have since filed a motion to dismiss for lack of prosecution under Rule 41(b) (Docket # 16), upon which I now rule.

Federal Rule of Civil Procedure 41(b) provides that a defendant may move for a dismissal for plaintiff's failure to prosecute the action or comply with the rules or any order of the court. Such a dismissal operates as an adjudication on the merits unless the court directs otherwise. *See* Fed. R. Civ. P. 41(b). Failure to prosecute does not require that the plaintiff "have taken any positive steps to delay the trial or prevent it from being reached by operation of the regular machinery of the court. It is quite sufficient if

[plaintiff] does nothing, knowing that until something is done there will be no trial.”

Adams v. Trs. of N.J. Brewery Employees’ Pension Trust Fund, 29 F.3d 863, 875 (3d Cir. 1994).

In the instant case, it is clear that plaintiffs have repeatedly failed to prosecute their action. A brief review of previous orders demonstrates this. On July 10, 2006, I noted in my Memorandum/Order that defendants’ motion for a more definite statement had been pending for four months without any response from plaintiffs. Given that Local Civil Rule of Procedure 7.1(c) requires a party that wishes to oppose a motion to serve a memorandum in opposition within fourteen (14) days of service of the motion, it would not have been inappropriate to have granted defendants’ motion at that time. However, because of the plaintiffs’ *pro se* status, I granted them another two weeks to file their opposition, noting that if it was not filed within fourteen days of the July 10 order, I would grant defendants’ motion as uncontested. *See* Memorandum/Order of July 10, 2006 at 3 (Docket # 13).

At the expiration of this two-week period, I granted defendants’ motion for a more definite statement. Memorandum/Order of July 26, 2006 (Docket # 14). I cautioned plaintiffs that if they “do not, within ten (10) calendar days of the date of this order, file a more specific complaint to which a responsive pleading can be filed, [their] complaint will be stricken.” *Id.*

Finally, on September 8, 2006, having heard nary a word from plaintiffs, I issued a

Memorandum/Order striking their complaint. It should be noted that this court had the authority to dismiss the case entirely at this stage, relying exclusively on Rule 12(e). *See Schaedler v. Reading Eagle Publ'n, Inc.*, 370 F.2d 795, 797–98 (3d Cir. 1967) (holding that Rule 12(e) confers authority on the court to dismiss a case for plaintiff's failure to amend the pleadings as directed). Again, on account of the plaintiffs *pro se* status and because dismissal is a severe exercise of judicial authority that should not be resorted to lightly, *see id.*, I charted the more modest course, striking the complaint but not dismissing the suit. *See* Memorandum/Order of September 8, 2006 (Docket # 15). Merely striking the complaint, rather than dismissing the suit, provided plaintiffs with one last chance to avoid dismissal on the merits by filing an amended complaint. Two months have now elapsed since the order striking plaintiffs' complaint and no amended complaint has been filed. Clearly a lawsuit cannot proceed in the absence of a complaint.

Defendants' persistent inaction constitutes a failure to prosecute. Accordingly, the case will be dismissed on the merits under Rule 41(b).

It is hereby ORDERED that defendants' motion to dismiss for lack of prosecution under Rule 41(b) is GRANTED and the suit is DISMISSED with prejudice. It is further ORDERED that judgment is entered in favor of defendants Daniel Sulman, William McMonagle, Thomas Kenny, and Michael Grasso, and against the plaintiffs.

BY THE COURT:

/s/ Louis H. Pollak
Louis H. Pollak, J.